IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

MACA.No. 1084 of 2005()

OPMV.1116/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY
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APPELLANT/PETITIONER

JOY K.J., S/O.JOSEPH KAVITHAZHA,
ANGADIKADAVE P.O., IRITTY,
URUPPANKUTTY.

BY ADV. SRI.CIBI THOMAS

RESPONDENTS: RESPONDENTS
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1. EDASSERIKATTIL GEORGE,
S/O.DEVASSIA,, ARALAM, KEEZHPALLY P.O.

2. GEORGE VAZHAKADAVATHE, S/O.CHACKO,
ARALAM P.O., PUTHEYANGADI.

3. NATIONAL INSURANCE COMPANY, KANNUR.

4. JAISON P.V., POOTHOTTAL,
KOMANATHODE P.O., PAYAM-670 704.

5. P.K.JOSEPH PATTAMANA, S/O.KURUVILA,
KOOMANTHODE P.O., PAYAM-VIA.

6. ORIENTAL INSURANCE CO. LTD., KANNUR.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1084 OF 2005

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Dated this the 10th day of October, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1116 of 2000 on the file of the Motor Accidents Claims Tribunal, Thalassery, is the appellant.

2. On 25.11.1999 petitioner was travelling in a Jeep bearing Reg. No.KL-13/B-4140. When the vehicle reached Kallumutti it collided with another Jeep bearing Reg. No.KL-13/b-2248, driven by the first respondent. The appellant sustained injuries. He claimed compensation impleading the owners, drivers and insurers of both the vehicles. Though the owner and driver of one of the Jeeps appeared through a counsel, they did not file any written statement. The owner and driver of the other Jeep did not even appear. Insurers alone contested the case. The Tribunal, relying on a statement contained in the first information report dismissed the petition holding that in the petition the case of the petitioner was that the accident occurred due to the negligence of the driver of the vehicle in which he was

travelling whereas in the first information statement petitioner had stated that the accident occurred due to the negligence of the driver of the other vehicle. Admittedly, no oral evidence was adduced. It is to be noted that the accident occurred due to the collision of two vehicles and the applicant is the victim who was travelling in one of the vehicles. Even if the accident is occurred due to the negligence of the driver of the other vehicle, the petitioner is entitled to compensation. The Tribunal had not considered other issues arising for consideration and dismissed the petition. So the award passed by the Tribunal is liable to be set aside with a direction to dispose of the case afresh. For that purpose the case has to go back.

3. In the result, the appeal is allowed. The award passed by the Tribunal dismissing the petition is set aside. The matter is remanded. Tribunal is directed to take O.P(MV) No.1116 of 2000 back to file and dispose of the same afresh in accordance with law after affording opportunity to both sides to adduce evidence, if any.

Parties are directed to appear before the Motor Accidents

Claims Tribunal, Thalassery on 26.11.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1084 OF 2005

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J U D G M E N T

10TH OCTOBER, 2007